

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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DEC 16 2004

Federal Communications Commission  
 Office of Secretary

In the Matter of	)	
	)	
ACS Wireless, Inc.	)	CC Docket No. 96-45
	)	
Petition for Waiver of Sections 54.313(d),	)	
54.314(d) and 54.307(c)	)	
of the Commission's Rules	)	
	)	
<b>WAIVER – EXPEDITED ACTION REQUESTED</b>	)	

**ACS WIRELESS, INC. PETITION FOR WAIVER OF  
 SECTIONS 54.313(d), 54.314(d) AND 54.307(c) OF THE COMMISSION'S RULES**

ACS Wireless, Inc. ("ACSW"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,<sup>1</sup> hereby petitions the Commission for a waiver of the universal support certification deadlines found in Sections 54.313(d) and 54.314(d) of the Commission's rules, as well as a waiver of the line count data submission deadlines found in Section 54.307(c) of the Commission's rules, so that it may receive high-cost loop support and Interstate Common Line Support ("ICLS") as of November 17, 2004, the date ACSW was designated a competitive eligible telecommunications carrier ("CETC") by the Regulatory Commission of Alaska ("RCA").<sup>2</sup> ACSW requests that the Commission grant the waivers requested herein and all relief necessary to allow ACSW to receive high-cost loop support and ICLS in the areas served by

<sup>1</sup> See 47 C.F.R. §§1.3, 1.925. Pursuant to §1.1105 of the Commission's rules, there is no filing fee associated with this request.

<sup>2</sup> See *In the Matter of the Request by ACS Wireless, Inc. for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under Telecommunications Act of 1996*, Docket No. U-04-37, Order No. 2 (Nov. 17, 2004) at p.13 ("RCA Order"). A copy of the Order is attached as Exhibit A.

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ACS of Alaska, Inc. (the Juneau and Greatland study areas) (“ACS-AK”), ACS of the Northland, Inc. (Glacier State study area) (“ACS-N”) and ACS of Anchorage, Inc. (“ACS-AN”) (collectively “ACSW New Study Areas”) as of the date of ACSW’s CETC designation.

## **I. INTRODUCTION AND SUMMARY**

ACSW is a small regional wireless carrier providing mobile and fixed voice and data communications services to approximately 96,000 wireless subscribers throughout Alaska. On November 17, 2004, the RCA designated ACSW as a CETC in the ACSW New Study Areas. The RCA found that granting ACSW designation as a CETC in the ACSW New Study Areas would improve customers’ ability to obtain wireless services and would provide customers more choices for meeting their communications needs.<sup>3</sup>

Pursuant to Section 254(e) of the Communications Act of 1934, as amended (the “Act”), and Sections 54.307, 54.313 and 54.314 of the Commission’s rules, as a designated CETC, ACSW is entitled to receive federal high-cost universal service support and ICLS. As a prerequisite for receiving such funding for certain quarters of the year, a CETC must file certifications by certain dates stating that it will use high-cost funds for their intended purposes. In addition, Section 54.307 requires CETCs to submit quarterly working loop data (or “line count” data) upon which high-cost and ICLS funding is based.

*Rural High-Cost Support Deadlines.* With respect to the rural areas served by ACS-AK and ACS-N, ACSW seeks a waiver of the July 1 certification deadline and the March 30 and September 30, 2004 line count submission deadlines.<sup>4</sup> Waiver of these deadlines would allow ACSW to receive high-cost support for the portion of the fourth quarter 2004 in which ACSW was designated as a CETC and for the entire first quarter 2005.

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<sup>3</sup> See *Id.*

<sup>4</sup> See 47 C.F.R. §§ 54.307(c); 54.314(d).

*Non-Rural High-Cost Support Deadlines.* With respect to the non-rural study area served by ACS-AN, ACSW seeks waiver of the July 1 and October 1, 2004 certification deadlines and the July 31 and September 30, 2004 line count deadlines in order to receive funding for the portion of the fourth quarter 2004 in which ACSW was designated as a CETC and for the entire first quarter 2005.<sup>5</sup>

*ICLS.* ACSW seeks waiver of the July 31, 2004 and September 30, 2004 line count deadlines, in order to receive ICLS as of the date it was designated as a CETC.<sup>6</sup>

As set forth below, grant of the requested waivers would be consistent with Commission precedent and would serve the public interest.

## **II. FACTUAL BACKGROUND FOR WAIVER REQUESTS**

### **A. Requests for Waivers for High Cost Support in Rural Study Areas**

#### **1. Request for Waiver of Certification Deadline in Rural Study Areas**

On October 1, 2004, ACSW timely filed a certification stating that ACSW would use all high-cost support provided to ACSW for the provision, maintenance, and upgrading of facilities and services for which support is intended, as required by Section 54.314(b).<sup>7</sup> Pursuant to Section 54.314(d), ACSW's October 1, 2004 certification allows it to receive support for all four quarters of 2005. ACSW understands that this October 2004 certification is sufficient to cover its use of universal service support received for service to Alaska communities, regardless of study area. Accordingly, ACSW believes that it is not required to file another high-cost support

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<sup>5</sup> See *Id.* §§ 54.307(c), 54.313.

<sup>6</sup> See *Id.* § 54.307(c).

<sup>7</sup> A copy of ACSW's certification letter is attached as Exhibit B. On September 29, 2004, the RCA filed a Section 54.314(a) Certification with the FCC and USAC confirming ACSW's status as a CETC, and noting that ACSW is not regulated by the State of Alaska. The RCA further stated that it directed ACSW to file an individual certification with the FCC pursuant to Section 54.314(b). A copy of the RCA's certification letter is attached as Exhibit C.

certification until October 1, 2005.<sup>8</sup> However, in order to receive funding for fourth quarter 2004, it needed to have filed a July 1, 2004 certification. Because the July 1 filing deadline fell nearly 4 months prior to ACSW's CETC designation, ACSW could not have made the July 1 certification filing. As such, ACSW requires a waiver of the July 1, 2004 certification deadline to receive support for the period of November 17 – December 31, 2004.<sup>9</sup>

## **2. Request for Waiver of Line Count Deadlines in Rural Study Areas**

To obtain universal service funding, in addition to making the necessary certification, the CETC also must make quarterly line count submissions in accordance with the date-specific requirements of Section 54.307(c). The Commission's rules do not specify the funding period to which the quarterly line count data submissions relate; indeed, the rules specify that support shall be provided upon the certification filing deadlines established in Section 54.314(d). However, the Universal Service Administrative Company ("USAC") has determined to condition disbursement of high-cost support on the quarterly filings set forth in Section 54.307(c). Specifically, in calculating rural high-cost support, USAC uses line-count data filed on September 30 to calculate support for first quarter, line-count data filed on December 30 to calculate support for second quarter, and line-count data submitted on March 30 to calculate support for third and fourth quarters.<sup>10</sup>

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<sup>8</sup> Out of an abundance of caution, however, by letter dated December 15, 2004, ACSW notified the FCC and the Universal Service Administrative Company ("USAC") of its CETC designation in the ACSW New Study Areas and reconfirmed its commitment to use the universal service support it receives only for purposes for which the support is intended. A copy of ACSW's confirmation letter is attached as Exhibit D ("*December 15 Letter*").

<sup>9</sup> See 47 C.F.R. § 54.314(d).

<sup>10</sup> See *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-2534 (rel. Aug. 16, 2004) at ¶ 3

On December 30, 2004, ACSW will file the line-count data required in order to receive support starting in the second quarter of 2005. However, to receive support as of November 17, 2004, ACSW would have had to file line count data on March 30 -- several months before it obtained its ETC designation in the ACSW New Study Areas. Additionally, to receive first quarter support for 2005, ACSW would have had to file line count data on September 30, also well before ACSW's CETC designation in these study areas. Thus, in addition to requesting Commission waiver of the certification filing deadline, ACSW also requests Commission waiver of the March 30 and September 30 line-count submission deadlines in order for it to receive funding as of November 17, 2004.

**B. Requests for Waivers for High-Cost Support in Non-Rural Study Areas**

**1. Request for Waiver of Certification Deadlines in Non-Rural Study Areas**

In order for ACSW to receive high-cost support in the area served by ACS-AN for the fourth quarter 2004 and first quarter 2005, it needed to have filed July 1, 2004 and October 1, 2004, as provided for in Section 54.313(d).<sup>11</sup> Because the July and October filing deadlines each fell months before ACSW's CETC designation in the ACS-AN study area, ACSW could not have made either certification filing. As such, ACSW requires a waiver of both the July 1 and October 1, 2004 certification deadlines to receive support for the period of November 17 – December 31, 2004 and for the entire first quarter of 2005.

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("Grande Order"); *RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, 7 FCC Rcd 24387 (rel. Dec. 4, 2002) at ¶ 3 ("RFB Order").

<sup>11</sup> See 47 C.F.R. § 54.313(b), (d).

## **2. Request for Waiver of Line Count Deadlines in Rural Study Areas**

To receive high-cost support in the ACS-AN study area as of the date ACSW was designated a CETC, ACSW would have had to file line count data on July 31 -- several months before it obtained its ETC designation in that study area. Additionally, to receive first quarter support for 2005, ACSW would have had to file line count data on September 30, also well before it was designated an ETC in the ACS-AN study area. Thus, in addition to requesting Commission waiver of the certification filing deadline for non-rural carriers, ACSW also requests Commission waiver of the July 31 and September 30 line-count submission deadlines in order for it to receive funding as of November 17, 2004.

### **C. Request for Waivers for ICLS Support**

CETCs that serve customers in study areas served by a rate-of-return carriers are eligible to receive ICLS pursuant to Sections 54.307 and 54.904 of the Commission's rules. Thus, ACSW is qualified to receive ICLS in the ACSW New Study Areas.

#### **1. Certification Deadlines for ICLS Support**

The Commission's rules require a CETC seeking ICLS funding to file a certification, pursuant to Section 54.904(a) that the support will be used for its intended purposes. The certification must be filed with the CETCs first line count submission and thereafter annually on June 30<sup>th</sup>.<sup>12</sup> On September 23, 2004, ACSW filed its ICLS self-certification letter in connection with its first line count submission for universal service funding in the state of Alaska.<sup>13</sup> ACSW understands that this September 2004 certification covers all universal service support received

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<sup>12</sup> See 47 C.F.R. §§54.904(a), (c), (d).

<sup>13</sup> A copy of the self-certification letter is attached as Exhibit B.

throughout the state of Alaska. Accordingly, ACSW believes that it is not required to file another ICLS certification until June 30, 2005.<sup>14</sup>

## **2. Factual Background for Waiver of Line-count Submission Deadlines for ICLS Support**

In order for a CETC to receive such support, it must also submit quarterly working loop data (or “line-count” data) pursuant to the dates set forth in Section 54.307(c).<sup>15</sup> ACSW requests that the Commission waive the line-count submission deadlines so that it may submit the information necessary for it to receive ICLS funding as of the date it was designated as a CETC in the ACSW New Study Areas. Specifically, ACSW requests that the Commission waive the July 31, 2004 and September 30, 2004 line-count submission deadlines so that it may receive ICLS for the portion of fourth quarter 2004 that it was designated a CETC and first quarter 2005.

The Commission’s rules do not specify the funding period to which the quarterly line-count data submissions relate. However, USAC ties its distribution of quarterly ICLS payments to the quarterly filings set forth in Section 54.307(c).<sup>16</sup> Specifically, in calculating ICLS, USAC uses line-count data filed on March 30 to calculate third quarter support; line-count data filed on July 31 to calculate fourth quarter support; line-count data filed on September 30 to calculate first quarter support; and line-count data filed on December 30 to calculate second quarter support.<sup>17</sup> Therefore, in order to receive ICLS as of the date it was designated a CETC in the

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<sup>14</sup> *But see December 15 Letter* (attached as Exhibit D) (reconfirming ACSW’s commitment to use support for the purpose for which the support is intended).

<sup>15</sup> *See* 47 C.F.R. §§54.307(c),(d).

<sup>16</sup> *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 at ¶ 2 (rel. Sep. 3, 2004).

<sup>17</sup> *See Id.*

ACSW New Study Areas, ACSW must seek waiver of both the July 31 and September 30 line-count deadlines.

As stated, ACSW was designated a CETC on November 17, 2004 – a full four months *after* the July 31, 2004 deadline for submission of the line-count data that USAC would have used to determine ACSW’s support level for fourth quarter 2004 and nearly two months after the September 30, 2004 deadline for submission of the line-count data that USAC would have used to determine the ACSW’s support levels for first quarter 2005. ACSW could not have met either deadline for the obvious reason that it did not become a CETC until after the deadlines had passed.

### **III. GRANT OF THIS PETITION WOULD BE CONSISTENT WITH COMMISSION PRECEDENT AND WOULD SERVE THE PUBLIC INTEREST**

Section 1.3 of the Commission’s rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>18</sup>

Federal courts also have recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”<sup>19</sup>

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<sup>18</sup> See 47 C.F.R. §1.925(b)(3).



Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”<sup>20</sup>

There is ample precedent that waiver is warranted under this standard if a CETC was unable to meet the certification and line-count filing deadlines due to its CETC designation date.<sup>21</sup> The Commission established the quarterly Section 54.314 certification filing schedule to facilitate USAC’s ability to report universal service support projections to the FCC. “The certification filing schedule set out in the Commission’s rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission.”<sup>22</sup> In adopting this certification schedule, the FCC did *not* intend to create a process that disadvantages carriers receiving the ETC designation subsequent to a quarterly certification deadline.<sup>23</sup>

Strict application of the Section 54.313(d) and Section 54.314(d) certification filing schedules and the Section 54.307 line count submission deadlines is inconsistent with the public interest. In granting waiver requests to CETCs in similar circumstances as ACSW, the

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<sup>19</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>20</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166 (citing *WAIT Radio*, 418 F.2d at 1159).

<sup>21</sup> *See Grande Order* at ¶ 6; *RFB Order* at ¶ 7. *See also Federal-State Joint Board on Universal Service, Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Sections 54.313(d) of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-2535 (rel. Aug. 16, 2004) at ¶ 1 (“*Centennial Order*”); *Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003) (“*Guam Cellular Order*”); *Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003) (“*Western Wireless Order*”).

<sup>22</sup> *See Grande Order* at ¶ 9. *See also Centennial Order* at ¶ 8.

<sup>23</sup> *See id.*

Commission has acknowledged that strict application of its filing deadlines may have the effect of penalizing newly designated ETCs.<sup>24</sup> Specifically, in granting similar waiver requests, the Commission has found that “it would be onerous to deny an ETC receipt of universal service support for almost two quarters because the ETC designation occurred after the certification filing deadline.”<sup>25</sup> The Commission further found that “these special circumstances outweigh any processing difficulties that USAC may face as a result of the late filed certifications.”<sup>26</sup>

ACSW’s circumstances are similar to those of several CETCs that have been granted waiver of the certification filing deadlines and the line count deadlines set forth in Section 54.307(c).<sup>27</sup> In those orders, the Commission found good cause to waive the deadlines where the timing of the carriers’ CETC designations precluded them from timely filing certification and line count data.<sup>28</sup> The same good cause exists in the instant case -- ACSW could not have met the certification and line-count deadlines because its CETC designation occurred several months *after* the deadlines had passed.<sup>29</sup> This is distinguishable from waiver petitions that the Commission has denied, such as where a carrier received its CETC designation *more than one month before* the line-count filing deadline, but missed the filing deadline due to its

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<sup>24</sup> See *Grande Order* at ¶ 4; *Centennial Order* at ¶ 3; *RFB Order* at ¶ 7; *Western Wireless Order* at ¶ 5. See also *Guam Cellular Order*.

<sup>25</sup> See *Grande Order* at ¶ 9. See also *Centennial Order* at ¶ 8; *RFB Order* at ¶ 6.

<sup>26</sup> See *Grande Order* at ¶ 9. See also *Centennial Order* at ¶ 8.

<sup>27</sup> See *Grande Order* at ¶ 5; *Centennial Order* at ¶ 4; *RFB Order* ¶ 4; *Western Wireless Order* at ¶ 4.

<sup>28</sup> See *Grande Order* at ¶¶ 9, 11; *Centennial Order* at ¶ 5; *RFB Order* ¶ 7; *Western Wireless Order* at ¶ 6.

<sup>29</sup> The Commission has found that CETCs are not required to file line count data before their ETC grant. See *Grande Order* at ¶ 11 (“we note that a carrier *may* file line counts in anticipation of receiving ETC designation *but is not required to file such line counts.*” (emphasis added)).

“inexperience” with line-count filing procedures.<sup>30</sup> The Commission has no similar reason to deny ACSW’s petition here, where ACSW was unable to meet each of the line-count and certification deadlines only because of the timing of its CETC designation.

It would be onerous to deny ACSW receipt of universal service support for nearly two quarters simply because it was designated as a CETC after the Section 54.313(d) and 54.314(d) deadlines had passed, making it impossible for ACSW to timely submit the certifications that would have permitted it to receive fourth quarter 2004 and first quarter 2005 support.<sup>31</sup>

Likewise, it would be onerous to deny ACSW universal service funding where its ETC designation came after the expiration of the Section 54.307(c) line-count deadlines. The filing deadlines set forth in both provisions create an unintended consequence with respect to ACSW by delaying universal service support several months beyond the date of its ETC designation. The result is inequitable and unduly burdensome to ACSW and frustrates the underlying purpose of the Commission’s rules.

Furthermore, denying support to ACSW merely because of the timing of its CETC designation would place ACSW at a competitive disadvantage as compared to other CETCs, in contravention of the Commission’s principle of competitive neutrality. As the Commission has observed on several occasions, “competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications.”<sup>32</sup> Thus, the Commission should grant ACSW’s Petition for Waiver.

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<sup>30</sup> *In the Matter of Federal-State Joint Board on Universal Service, FiberNet LLC Petition for Waiver of 54.307(c) of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-1287 (rel. May 6, 2004).

<sup>31</sup> *See Western Wireless Order* at ¶ 7.

<sup>32</sup> *See Grande Order* at ¶ 10. *See also Western Wireless Order* at ¶ 8; *Federal State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on

### III. REQUEST FOR EXPEDITED TREATMENT

ACSW requests expedited action on this Petition. ACSW and the Alaska communities that it serves should not be deprived of universal service support for two quarters as a result of the unintended effect of the certification and quarterly filing deadlines of Sections 54.313(d), 54.314(d) and 54.307(c). Unduly delaying ACSW's receipt of support under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost and rural areas. ACSW has been providing service in the ACSW New Study Areas subject to the requirements of CETC status since November 17, 2004, but has not yet received any of the universal service high-cost support for which it should be eligible. For this reason, expedited action is warranted and would serve the public interest.

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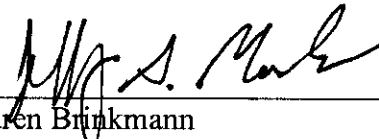
Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432, 20478-79, ¶¶ 89-90 (1999),  
*reversed in part remanded in part, Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

#### IV. CONCLUSION

For the reasons stated herein, ACSW respectfully requests that the Commission grant this Petition without delay, and grant all waivers necessary for ACSW to receive rural and non-rural high-cost support and ICLS in the ACSW New Study Areas as of November 17, 2004, the date it was designated as a CETC by the RCA. The Commission should direct USAC to accept retroactively-filed line count data and certifications as timely, in order to allow ACSW to receive such support as of the date of its CETC designation.

Respectfully Submitted,

ACS WIRELESS, INC.



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Dated: December 16, 2004

# **EXHIBIT A**

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
James S. Strandberg

In the Matter of the Request by ACS  
WIRELESS, INC., for Designation as a Carrier  
Eligible to Receive Federal Universal Service  
Support Under the Telecommunications Act of  
1996

U-04-37

ORDER NO. 2

**ORDER APPROVING APPLICATION  
FOR ELIGIBLE TELECOMMUNICATIONS  
CARRIER STATUS AND REQUIRING FILINGS**

BY THE COMMISSION:

Summary

We approve the Application<sup>1</sup> filed by ACSW<sup>2</sup> for status as an eligible telecommunications carrier (ETC) for purposes of receiving federal and state universal service funding in the areas served by ACS-AK,<sup>3</sup> ACS-AN,<sup>4</sup> and ACS-N/GS.<sup>5</sup> We require ACSW to file an affidavit certifying that it will advertise its services under the

<sup>1</sup>ACS Wireless, Inc. Request for Designation as an Eligible Telecommunications Carrier, filed April 12, 2004 (Application).

<sup>2</sup>ACS Wireless, Inc. (ACSW).

<sup>3</sup>ACS of Alaska, Inc. d/b/a Alaska Communications Systems, ACS Local Service, and ACS (ACS-AK).

<sup>4</sup>ACS of Anchorage, Inc. d/b/a Alaska Communications Systems, ACS Local Service, and ACS (ACS-AN).

<sup>5</sup>ACS of the Northland, Inc. d/b/a Alaska Communications Systems, ACS Local Service, and ACS for its Glacier State study area (ACS-N/GS).

1 minimum criteria set forth in this Order. We require ACSW to annually file information  
2 with us describing its use of universal service funds (USF). We also require ACSW to  
3 file updated build-out information and to report to us if there is no possibility of providing  
4 service to its customers upon reasonable request.

#### 5 Background

6 We required ACSW to file maps showing a detailed description of the  
7 proposed study areas for which it requested ETC designation. We also required ACSW  
8 to provide maps to illustrate its current coverage area relative to the service areas of  
9 ACS-AN, ACS-AK, and ACS-N/GS.<sup>6</sup> ACSW filed the required information on  
10 August 18, 2004.<sup>7</sup> On September 27, 2004,<sup>8</sup> and November 4, 2004,<sup>9</sup> ACSW filed  
11 motions for a ruling on its ETC application.<sup>10</sup>

#### 12 Discussion

13 ETCs are eligible to receive support to provide, maintain, and upgrade  
14 facilities and services for the telecommunications services and functions defined by  
15 federal regulation at 47 C.F.R. § 54.101.<sup>11</sup> Under federal law, an ETC must provide the  
16 supported universal telecommunications service throughout a defined service area.<sup>12</sup> In  
17 addition, the applicant must meet the following criteria for ETC status: (a) demonstrate

18 <sup>6</sup>Order U-04-37(1), *Order Granting Motion and Requiring Filings*, dated  
19 July 19, 2004.

20 <sup>7</sup>*Supplemental Information in Response to Order No. 1.*

21 <sup>8</sup>*ACS Wireless' Motion for a Ruling on Its Application for ETC Status or,*  
22 *Alternatively, Motion for a Prehearing Conference.*

23 <sup>9</sup>*Second Motion for Ruling on ACS Wireless, Inc.'s ETC Application or,*  
24 *Alternatively, Motion for Prehearing Conference.*

25 <sup>10</sup>By issuance of this Order, these motions are moot.

26 <sup>11</sup>See also 47 U.S.C. § 254(e).

<sup>12</sup>47 C.F.R. § 54.201(d).



1 that it owns at least some facilities; (b) demonstrate its capability and commitment to  
2 provide the nine basic services required by FCC regulation;<sup>13</sup> (c) reasonably show that  
3 granting designation as an ETC is in the public interest; and (d) show that upon  
4 obtaining ETC status, the applicant will be able to offer and will advertise the availability  
5 of the services supported by the federal USF.<sup>14</sup>

6 Ownership of Facilities

7 ACSW has cellular facilities in the ACS-AK, ACS-AN, and ACS-N/GS  
8 service areas. ACSW stated that it will provide service using its own facilities or, its own  
9 facilities in combination with resale of services of another carrier. In addition, ACSW  
10 provided locations and status of its currently operational cell sites.<sup>15</sup> ACSW holds  
11 licenses to provide cellular service and personal communications service (PCS) in the  
12  
13  
14

15 <sup>13</sup>The nine basic services are defined at 47 C.F.R. § 54.101.

16 <sup>14</sup>47 U.S.C. § 214(e)(1) and (2) of the Act provides:

17 (1) A common carrier designated as an eligible telecommunications  
18 carrier under paragraph (2), (3), or (6) shall be eligible to receive universal  
19 service support in accordance with section 254 of this title and shall,  
20 throughout the service area for which the designation is received –

21 (A) offer the services that are supported by Federal universal  
22 service support mechanisms under section 254(c) of this title, either using  
23 its own facilities or a combination of its own facilities and resale of another  
24 carrier's services (including the services offered by another eligible  
25 telecommunications carrier); and

26 (B) advertise the availability of such services and the  
charges therefore using media of general distribution.

(2) . . . Before designating an additional eligible telecommunications  
carrier for an area served by a rural telephone company, the State  
commission shall find that the designation is in the public interest.

<sup>15</sup>Application, Exhibit C.

1 Alaska Basic Trading Areas BTA014, BTA136, and BTA221 that covers its proposed  
2 service areas.<sup>16</sup>

3 ACSW's current facilities do not cover the entire ACS-AK and ACS-N/GS  
4 service areas and ACSW has not upgraded all its operational cell sites for code division  
5 multiple access (CDMA) coverage.<sup>17</sup> In addition, ACSW must continue to serve most  
6 parts of its proposed service areas with its time division multiple access (TDMA) and  
7 advance mobile phone service (AMPS) networks while it transitions to CDMA. ACSW  
8 stated that with access to federal USF, it will develop its network in both the ACS-AN,  
9 ACS-AK, and ACS-N/GS service areas. While this shows that ACSW does not hold  
10 facilities in all portions of the ACS-AK and ACS-N/GS service area, there is still  
11 adequate record for us to conclude that ACSW meets the "ownership of facilities" test.

12 While section 214(e)(1) of the Act requires an ETC to "offer" the services  
13 supported by the federal universal service support mechanisms, this does not require a  
14 competitive carrier to actually provide the supported services throughout the designated  
15 service area before designation as an ETC.<sup>18</sup> As a result, ACSW's lack of facilities  
16 throughout the proposed ETC service areas at this time does not, in and of itself, make  
17 ACSW ineligible for ETC status.

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19  
20 <sup>16</sup>ACSW's PCS licenses include KNLF936, KNLG973, and KNLG363. ACSW's  
21 Cellular Licenses include KNKN261, KNKA480, KNKQ398, and KNKN204. See  
22 Application, Exhibits A and B, for the coverage of ACSW. ACSW's cellular license  
23 KNKN204 expired on October 1, 2004, and its application for renewal of service with the  
24 FCC is currently pending.

25 <sup>17</sup>ACSW stated that its CDMA system is capable of providing assisted global  
26 positioning satellite location technology.

<sup>18</sup>*Federal-State Joint Board on Universal Service; Western Wireless Corporation  
Petition for Preemption of an Order of the South Dakota Public Utilities Commission,  
Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-73 (2000).*

1 Capability and Commitment

2 ACSW must provide enough information to demonstrate its ability to  
3 provide each of the nine basic services designated by the FCC, including Lifeline and  
4 Link Up services,<sup>19</sup> or obtain a waiver.<sup>20</sup> In its Application, ACSW stated that it currently  
5 offers all nine basic services to its customers, and it commits to providing all nine  
6 services throughout its proposed service area, including Lifeline and Link Up services,  
7 upon receiving USFs.<sup>21</sup>

8 ACSW certified that it currently provides voice grade access to the public  
9 switched network through interconnection arrangements with local telephone  
10 companies, offers different rate plans which offer "local usage,"<sup>22</sup> provides both  
11 out-of-band and in-band multi-frequency signaling, the functional equivalent of dual tone  
12 multi-frequency signaling, single party service, access to emergency services,<sup>23</sup> access  
13  
14

15 <sup>19</sup>Lifeline and Link Up services are services offered by ETCs to qualifying  
16 low-income customers. Link Up is described at 47 C.F.R. § 54.411(a), and Lifeline is  
described at 47 C.F.R. § 54.401(a).

17 <sup>20</sup>The FCC allows a state commission to grant waiver of the requirement to  
18 provide single-party access to Enhanced 911 (E911), and toll limitation services to allow  
47 C.F.R. § 54.101(c).

19 <sup>21</sup>Application at 6-10.

20 <sup>22</sup>Although the FCC has not set a minimum local usage requirement, ACSW  
21 certifies that it will comply with the minimum local usage requirements adopted by the  
FCC.

22 <sup>23</sup>Access to emergency services includes access to services, such as 911 and  
23 E911, provided by local governments or other public safety organizations.  
47 C.F.R. § 54.101(a)(5). 911 is a service that permits a telecommunications user, by  
24 dialing the three-digit code "9-1-1," to call emergency services through a Public Service  
Access Point (PSAP) operated by the local government. "E911" is a 911 service that  
25 includes the ability to provide automatic number identification (ANI) and automatic  
location information.  
26

1 to operator services, access to interexchange services, access to directory services,  
2 and can readily implement toll-limitation for qualifying low-income customers.<sup>24</sup>

3 Although ACSW may be providing the nine basic services to its existing  
4 customer base, a question remains whether ACSW would be capable of providing the  
5 services to all customers reasonably requesting service within its proposed service  
6 areas. In response to this issue, ACSW agreed to adopt the seven-step approach we  
7 approved for ADT<sup>25</sup> to meet its ETC obligations<sup>26</sup> to offer services, upon reasonable  
8 request, throughout the ACS-AN, ACS-AK and ACS-N/GS areas, including areas where  
9 it does not currently have facilities.<sup>27</sup> In addition, ACSW will file a report with us if it  
10 cannot provide service without constructing a new cell site, which will include the  
11 estimated cost of construction and its position on whether the request for service is  
12 reasonable and whether high-cost funds should be expended on the request.<sup>28</sup>

13 We find this is a reasonable strategy for providing service throughout the  
14 study areas. We will address any ACSW requests to deny service on a case-by-case  
15 basis. If ACSW unreasonably fails to serve customers throughout its designated  
16 service area, we would have cause to revoke its ETC status.

17 Although we find that ACSW has generally demonstrated that it would be  
18 capable of providing the nine basic services, we conclude that two of these services,  
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21 <sup>24</sup>Willard Affidavit ¶ 6.

22 <sup>25</sup>Alaska DigiTel, LLC (ADT).

23 <sup>26</sup>Order U-02-39(10), *Order Granting Eligible Telecommunications Carrier Status*  
24 *and Requiring Filings*, dated August 28, 2003. In this Order, we approved the seven  
25 step plan ADT proposed for serving customers.

26 <sup>27</sup>Application at 10.

<sup>28</sup>Response at 11.

1 access to emergency services and Lifeline and Link Up services, warrant further  
2 discussion.

3 Emergency Services

4 The FCC provided deployment deadlines to wireless carriers in  
5 implementing Phase II E911 services in the *Non-Nationwide Carriers Order* and  
6 reporting requirements for Tier III carriers.<sup>29</sup> ACSW filed a petition with the FCC  
7 requesting relief from the deployment schedules set out in the *Non-Nationwide Carriers*  
8 *Order*.<sup>30</sup> Given ACSW's request for waiver of emergency services deadlines, we sought  
9 further information from ACSW to further understand its capability of providing  
10 emergency services.

11 ACSW stated that it is currently providing basic 911 services in the  
12 ACS-AN, ACS-AK, and ACS-N/GS areas.<sup>31</sup> With its TDMA and AMPS network, ACSW  
13 transmits its customer's 911 emergency call from the cell site where the 911 originates  
14 to the PSAP serving that area. However, ACSW's TDMA/AMPS system is not E911  
15 Phase II capable.<sup>32</sup> ACSW stated that with its CDMA network, it is capable of providing  
16 Phase I and Phase II, E911 services.<sup>33</sup> While ACSW is not fully compliant with the  
17 requirements of the FCC in implementing Phase I and Phase II, E911 services at this

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19 <sup>29</sup>See *Revision of the Commission's Rules to Ensure Compatibility with*  
20 *Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for*  
21 *Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay (*Non-Nationwide*  
22 *Carriers Order*), FCC 02-210, (rel. July 26, 2002), at 13, para. 34.

23 <sup>30</sup>*ACS Wireless Petition for Limited Waiver and Forbearance, In the Matter of*  
24 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911*  
25 *Emergency Calling Systems*, CC Docket No. 94-102, filed on November 14, 2003.

26 <sup>31</sup>Application at 16.

<sup>32</sup>Response at 8.

<sup>33</sup>See 47 C.F.R. § 54.101(a)(5). ACSW stated that its CDMA system is capable  
of providing A-GPS location technology.

1 time, we believe that ACSW has demonstrated its ability to meet the emergency  
2 services requirement associated with ETC status.

3 Lifeline and Link Up Services

4 ACSW committed to provide Lifeline and Link Up services. ACSW stated  
5 that for its qualified customers, ACSW will offer a basic Lifeline rate of one dollar while  
6 Link Up customers will be able to subscribe for service at no charge.<sup>34</sup> ACSW also  
7 provided a means test for customers to be eligible under the Lifeline and Link Up  
8 services.<sup>35</sup> We recently adopted regulations that would define the criteria to identify  
9 customers eligible to participate in the Lifeline and Link Up programs and other  
10 policies.<sup>36</sup> ACSW shall comply with our Lifeline regulations when those regulations  
11 become effective. ACSW stated that it would revise its means test consistent with the  
12 criteria we establish in Docket R-03-6.<sup>37</sup>

13 Public Interest Determination

14 In a recent decision evaluating an ETC application, the FCC stated:

15 [T]he value of increased competition, by itself, is not sufficient to satisfy  
16 the public interest test in rural areas. Instead, in determining whether  
17 designation of a competitive ETC in a rural telephone company's service  
18 area is in the public interest, we weigh numerous factors, including the  
19 benefits of increase competitive choice, the impact of multiple  
20 designations on the universal service fund, the unique advantages and  
21 disadvantages of the competitor's service offering, any commitments  
22 made regarding quality of telephone service provided by competing  
23 providers, and the competitive ETC's ability to provide the supported

22 <sup>34</sup>Application at 11-15.

23 <sup>35</sup>Application at 14.

24 <sup>36</sup>See Docket R-03-6 entitled: *In the Matter of Proposed Regulations*  
25 *Implementing Lifeline and Link Up Eligibility Policies.*

26 <sup>37</sup>Response at 11.

1 services throughout the designated service area within a reasonable time  
2 frame."<sup>38</sup>

3 We agree with the FCC that evaluation of the public interest requires  
4 review of a variety of factors and cannot simply rest on "increased competition."

5 ACSW stated that its designation as an ETC will benefit consumers  
6 because it will provide more choices for consumers and will improve service quality and  
7 public safety. ACSW also stated that it will offer improved service to underserved  
8 customers who do not have access to modern wireless including high speed data  
9 service. ACSW further stated that its customers will benefit from a larger  
10 facilities-based network which will result in fewer "dead spots" and dropped calls.  
11 ACSW stated that with its CDMA system, it will give customers better choices of digital  
12 wireless services, including data service.

13 We find that granting ACSW's ETC application will improve customers'  
14 ability to obtain wireless services, providing customers more choices for meeting their  
15 communications needs. Low-income customers who otherwise would be unable to  
16 afford wireless service will be able to obtain service using the Lifeline and Link Up  
17 discounts. Although ACSW did not offer a rate plan based on receipt of universal  
18 service support, it did, however, provide its current basic rate plans with local usage,  
19 which provides an amount of minutes of use of exchange service free of charge to end  
20 users.<sup>39</sup>

21  
22  
23 <sup>38</sup>*Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition*  
24 *for Designation as an Eligible Telecommunications Carrier in the Commonwealth of*  
25 *Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, rel.*  
26 *January 22, 2004.*

<sup>39</sup>Application at 8.

1 The mobility of ACSW's service also serves the public interest. Although  
2 mobility is not one of the supported services, it is a convenience to the public. Mobile  
3 service provides critical access to health and safety services when customers are at  
4 home or away from their homes.

5 We do not currently regulate the quality of service by ACSW, and we do  
6 not have sufficient evidence to define quality of service standards for wireless carriers.  
7 However, if we receive customer complaints, we may examine whether ACSW is  
8 meeting its ETC obligations throughout the service area. We may also consider ETC  
9 service quality in a regulations docket upon petition or on our own motion.

10 ACSW asserted that ETC designation would allow it to expedite its  
11 build-out plans for additional cell sites. ACSW expects that when its CDMA network is  
12 fully deployed it will reach CDMA coverage with A-GPS capability to 98 percent of the  
13 population in the ACS-AN area, 95 percent of the population in the ACS-AK area, and  
14 up to 98 percent of the population in the ACS-N/GS area. Such expansion of facilities  
15 may improve service quality, which would also be in the public service.

16 Advertising Services

17 The Act requires an ETC to advertise the availability of the nine basic  
18 services (including Link Up and Lifeline) and the charges for the services using "media  
19 of general distribution."<sup>40</sup>  
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22  
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25 <sup>40</sup>47 U.S.C. § 214(e)(1)(B).  
26



1 The APUC<sup>41</sup> required MTA to meet the following minimum criteria to  
2 ensure appropriate and sufficient customer notification of its services:<sup>42</sup>

3 a) once every two years MTA must perform community outreach  
4 through appropriate community agencies by notifying those agencies of  
ACSW's available services;

5 b) once every two years MTA must post a list of its services on a  
6 school or community center bulletin board in each of the utility's  
exchanges;

7 c) once a year MTA must provide a bill stuffer indicating its  
8 available services; and

9 d) once a year MTA must advertise its services through a general  
distribution newspaper at the locations it serves.

10 We required all incumbent local carriers to meet the same minimum  
11 advertising requirements as set for MTA when we granted its ETC status.<sup>43</sup> ACSW  
12 agreed to meet the same advertising requirements and file an affidavit detailing its  
13 compliance with the established standards when it has definitive dates for advertising  
14 and is ready to provide service.<sup>44</sup>

15 In summary, we find that granting ETC status to ACSW is in the public  
16 interest. We conclude that ACSW adequately demonstrated that it met all other criteria

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18  
19 <sup>41</sup>The Alaska Public Utilities Commission (APUC or Commission) was the  
20 predecessor to this agency. We assumed the responsibilities of the APUC on  
July 1, 1999 under Ch. 25, SLA 1999.

21 <sup>42</sup>Order U-97-187(1), *Order Granting Eligible Carrier Status; Granting Limited*  
22 *Waiver; and Establishing Toll-Control and Advertising Requirements*, dated  
23 December 19, 1997. Docket U-97-187 is entitled: *In the Matter of the Request by*  
24 *MATANUSKA TELEPHONE ASSOCIATION, INC., for Designation as a Carrier Eligible*  
*to Receive Federal Universal Service Support Under the Telecommunications Act of*  
1996.

25 <sup>43</sup>*Id.*

26 <sup>44</sup>Response at 11.